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Washington report, vol. 12 no.40, November 28, 1983

American Institute of Certified Public Accountants.

AICPA Washington Report

November 28, 1983, Volume XII, Issue 40

COMPTROLLER OF THE CURRENCY

The Office of the Comptroller of the Currency recently adopted final amendments to its regulations and interpretive rulings regarding national bank borrowing limits (see the 11/21/83 Fed. Reg., pp.52567-68). The amendments will make the Office's interpretive rulings consistent with the repeal of national bank borrowing limits by the Garn-St Germain Act (10/15/82). The Act repealed the 12 U.S.C. 82 provision which provided that no national banking association could be liable in an amount exceeding the amount of its capital stock plus 50 percent of the amount of its unimpaired surplus fund subject to certain limitations. The final rule is effective 11/21/83. For additional information contact Larry Stein at 202/447-1880.

FEDERAL DEPOSIT INSURANCE CORPORATION

A proposal drafted by the FDIC which would establish a risk-based deposit insurance system was introduced on 11/16/83 in both chambers of Congress. The legislation, H.R. 4451, and S. 2103, additionally would make that agency the receiver for any insured bank closed by regulatory agencies and establish an order of priorities for payment of all claims against the assets of insolvent banks. The proposal would give the FDIC enforcement powers over national banks and state banks that are members of the Federal Reserve System as well as explicit authority to examine bank subsidiaries in connection with bank examinations. Further, the measure would preempt all state laws relating to the appointment of receivers for insolvent banks and establish the FDIC as the receiver whenever an insured bank fails. In addition, a priority system for paying off claims against a defunct bank would be established. First priority would be the receiver's administrative expenses. Second priority would be claims for deposit "which have accrued and become unconditionally fixed on or before the date the bank is closed." Any claims based on an agreement for accelerated, stipulated or liquidated damages would be third in line under the priority system while subordinated debt claims would be in fourth place and stockholder claims would be last. The FDIC bill would also relax restrictions in the operation of Deposit Insurance National Banks and clarify insurance coverage applicable to public officials, IRAs and Keogh plans.

An amendment defining the amount of an insured deposit has been approved and added to FDIC regulations, "Clarification and Definition of Deposit Insurance" (see the 11/16/83 Fed. Reg., pp. 52030-1). The new section takes into account accrued or anticipated interest or earnings on deposits and will include them as part of the deposits for deposit insurance purposes. The regulation provides a method for determining interest on deposits for insurance purposes where no interest rate is provided for by contract. The amendment will be effective 12/16/83. For additional information contact Roger A. Hood at 202/389-4171.

NATIONAL CREDIT UNION ADMINISTRATION

According to a recent interpretive ruling and policy statement, 83-3, the NCUA Board has determined that when certain requirements are met, leasing of personal property is the functional equivalent of secured lending by federal credit unions (FCUs) and, therefore, is a permissible activity (see the 11/21/83 Fed. Reg., pp. 52568-69). In order to be considered permissible leases, federal credit unions must enter into net, full payout leases. According to the release, federal credit unions may engage in both open-end and closed end leasing. The responsibility for depreciation costs determines whether the lease is open or closed end. The Board also determined that FCUs may engage in both direct and indirect leasing. In indirect leasing, the FCU

purchases the lease and the leased property after the lease has been executed between a vendor and a FCU member. In direct leasing, the FCU will become the owner of personal property at the request of the lessee member who wishes to lease it from the FCU. The FCU will purchase the property from the vendor. The rule is effective 11/17/83. Although this is a final rule, comments will be accepted until 1/20/84. For additional information contact Robert Fenner at 202/357-1030.

SECURITIES AND EXCHANGE COMMISSION

Computer products or services provided to audit clients by certified public accounting firms do not affect the independence of the firms, according to a decision by the SEC in an open meeting on 11/22/83. Among other matters considered at this meeting was a petition by the Association of Data Processing Service Organization (ADAPSO) that the SEC propose for comment a rule which would provide that an accounting firm would not be independent if it provided computer products or services to its audit clients. SEC Chief Accountant Clarence Sampson reviewed the earlier SEC decisions to rescind ASRs 250 and 264, relating to auditor provided management advisory services. Sampson endorsed this earlier action and stated that nothing new had been added to the subject. SEC Commissioner Bevis Longstreth agreed with the earlier SEC rescission of the ASRs as explained by Sampson and was unaware of any new evidence. Mr. Sampson explained that auditor provided management advisory services are the subject of continuous review, mentioning the work of the Public Oversight Board and the AICPA's Peer Review process. SEC Chairman John Shad and Commissioners Longstreth and Treadway voted unanimously against the ADAPSO petition.

The nomination of Charles C. Cox to become a member of the Securities and Exchange Commission (SEC) was approved by voice vote of the U.S. Senate on 11/19/83. This confirmation follows a recent hearing by the Senate Banking Committee and a majority favorable vote by the Committee. When formally sworn in, Mr. Cox will fill the seat of former Commissioner John Evans. Mr. Cox term will expire 6/5/88. A White House nomination to fill the vacancy created by the 11/11/83 resignation of Commissioner Barbara Thomas is still pending.

TREASURY, DEPARTMENT OF

There will be a meeting of the Commissioners Advisory Group on 12/5 and 12/6/83 during which IRS administration of penalties enacted by the Tax Equity and Fiscal Responsibility Act of 1982 will be discussed. Among the other subjects to be discussed will be improved communications between the IRS and professional associations. The meeting, which is open to the public, will be held in Room 3313 of the IRS building at 1111 Constitution Avenue, Washington, D.C. For additional information contact John Burke at 202/566-4143.

The fall 1983 issue of the quarterly "Statistics of Income Bulletin" has been made available by the IRS. This issue will be of particular interest to tax preparers, economists, tax researchers and analysts, financial planners and accountants. Highlights of the issue include: projections of tax return filings, 1984-1991; average and marginal tax rates on individual returns, and; selected statistical series, 1970-1983. Additionally, the Bulletin contains tax related information on safe harbor leasing, domestic international sales corporation returns, superfund for environmental taxes, and crude oil windfall profit tax. Copies of the Bulletin may be obtained for $4.75 by requesting publication 1136 from the GPO at 202/783-3238.

SPECIAL: SWISS GOVERNMENT PROPOSES LAW TO MAKE INSIDER TRADING CRIMINAL

The Swiss government last week announced plans to make insider trading in financial negotiations a criminal offense. A new draft law announced by the Federal Justice Ministry on 11/16/83 is to be presented to Parliment in January and is expected to become law shortly thereafter. Until now, only insiders who passed confidential information to third parties to the detriment of their firms or banks were punishable under Swiss law. The new proposal would replace a private convention drawn up by the Swiss Banker's Association last year in which the banks agreed to provide the U.S. SEC with information on insider deals in the U.S. market if a panel of referees decided there was a clear indication that such deals were occuring. Under the proposed statute, insider trading will be punishable by fines or imprisonment and any monetary gain made through use of insider information will be confiscated. The statute is specifically directed at ranking officials of companies or banks who engage in insider trading, according to an announcement by the Justice Ministry. The announcement said the new requirements are intended to counter the misuse of confidential information "of a kind substantially to influence the market" by such employees. Commercial law would also be amended to enable the return of the proceeds of the transaction in question to the affected company. The new law would cover listed and over-the-counter shares, participation certificates, cooperative certificates, and bonds. The change in Swiss law stems from a long campaign by the SEC dating back to the 1960s to breach the tight wall of secrecy that surrounds the banking community in Switzerland.

For additional information, please contact Jim Kovakas, Gina Rosasco, Nick Nichols or Kathee Baker at 202/872-8190.

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American Institute of Certified Public Accountants
1620 Eye Street, N.W., Washington, D.C. 20006

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